IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

LaSALLE BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR CERTIFICATEHOLDERS OF BEAR STEARNS ASSET BACKED SECURITIES I, LLC, ASSET-BACKED CERTIFICATES, SERIES 2005-HE 7,	)	
Appellant,	)	No. 64962-1-I
v.	)	DIVISION ONE
PATRICIA L. VOGTMAN, a widow,	)	
Defendant,	)	
LISA L. GHRAMM, Personal Representative of the Estate of Vernon Vogtman, Pierce County Probate No. 03-4-11419-0; and LISA L. GHRAMM, as her separate estate,	)	UNPUBLISHED OPINION
Respondent.	)	FILED: May 17, 2010

Spearman, J.-Patricia Vogtman and Lisa Ghramm have each owned an undivided one-half interest in a piece of property since 2003. In 2004 and 2005, Vogtman refinanced a loan on the property, securing the loan with a note and a deed of trust. In May 2008, LaSalle Bank National Association (LaSalle), the assignee of the 2005 note and deed of trust, initiated non-judicial foreclosure proceedings to foreclose the 2005 deed of trust. LaSalle filed a complaint

against Vogtman and Ghramm, asking the court to declare that the 2005 deed of trust was fully enforceable against the property and that LaSalle could proceed with a non-judicial foreclosure. Ghramm filed a motion for summary judgment, arguing that because Vogtman was acting in her personal capacity when she refinanced the loans, she could not encumber the entire property and the deed of trust only encumbered Vogtman's one-half interest in the property. The court granted Ghramm's motion for summary judgment. On appeal, LaSalle asserts that the trial court erred in granting Ghramm's motion for summary judgment. In the alternative, LaSalle contends that its interest in the property is superior to Ghramm's interest in the property under the doctrine of equitable subrogation. We affirm the summary judgment dismissal of the lawsuit.

FACTS

Patricia Vogtman (Vogtman) married Vernon Vogtman (Vernon) on December 12, 1995. At the time they were married, Vogtman owned a piece of property with a house on it as her separate property. In 1998, Vogtman converted the property into community property through a quit claim deed to herself and Vernon. In 1998, Vogtman and Vernon borrowed $116,000 from Crossland Mortgage Corp. and secured the loan with a deed of trust on the property.

Vogtman and Vernon separated in January, 2002. On March 15, 2002, Vernon wrote a last will and testament. In the will, he bequeathed his entire estate to his daughter, Lisa Ghramm. In June 2002, Vernon filed a petition for

dissolution of marriage.

Vernon died on March 1, 2003, before the dissolution was final. Under Vernon's will, Ghramm inherited an undivided one-half interest in the property. Vogtman continued to own an undivided one-half interest in the property. The court appointed Vogtman as personal representative of Vernon's estate. In May 2003, the court dismissed the petition for dissolution of marriage.

In 2004, Vogtman refinanced the 1998 loan through Chase Manhattan Mortgage Corp. The new note was for $112,300. Vogtman signed the note and deed of trust as "Patricia L. Vogtman," with no reference to the estate or probate proceeding. In 2005, Vogtman refinanced the loan again through Liberty American Mortgage Corp. The new note was for $176,500. The deed of trust states that the "borrower" is "Patricia L. Vogtman, as her separate estate." Vogtman signed the note and deed of trust as "Patricia L. Vogtman," again with no reference to the estate or probate proceeding.

In August 2007, the court found that Vogtman had taken "no action regarding the administration of the estate for approx. four years." The court appointed Ghramm as personal representative of Vernon's estate. In March 2008, Ghramm, as personal representative of Vernon's estate, deeded herself the undivided one-half interest in the property.

Vogtman was delinquent under the terms of the 2005 note. In May 2008, LaSalle Bank National Association (LaSalle), the assignee of the 2005 note and deed of trust, initiated non-judicial foreclosure proceedings to foreclose the 2005

deed of trust.

LaSalle filed a complaint against Vogtman and Ghramm, personally and as the personal representative, for declaratory relief and/or judicial foreclosure of the deed of trust. LaSalle asked the court to declare that the 2005 deed of trust was fully enforceable against the property and that LaSalle could proceed with a non-judicial foreclosure. In the alternative, LaSalle requested a judgment against Vogtman and, in the event of nonpayment, an order declaring that the 2005 deed of trust was a valid first lien on the property that could be foreclosed, with the proceeds to be applied to the judgment.

The court entered an order of default against Vogtman for failure to appear. LaSalle filed a motion for summary judgment and Ghramm filed a cross motion for summary judgment. Ghramm argued that because Vogtman was acting in her personal capacity when she refinanced the loans, she could not encumber the entire property and the deed of trust only encumbered Vogtman's one-half interest in the property. The court granted Ghramm's motion for summary judgment and ordered that the 2005 deed of trust "only encumbers Defendant Patricia Vogtman's one-half interest in the property and does not encumber Defendant Lisa Ghramm's one-half interest in the property."

LaSalle appeals.

DISCUSSION

LaSalle asserts that the trial court erred in granting Ghramm's motion for summary judgment because Vogtman was the personal representative of

Vernon's estate and therefore had the authority to encumber the entire property, which she did when she refinanced the loans in the 2004 and 2005 deeds of trust. Ghramm argues that Vogtman was acting in her own capacity when she refinanced the loan and there is no evidence to support the assertion that she was acting on behalf of Vernon's estate. We agree with Ghramm.

We review summary judgment orders de novo and perform the same inquiry as the trial court. Hisle v. Todd Pac. Shipyards Corp., 151 Wn.2d 853, 860, 93 P.3d 108 (2004). Summary judgment is proper if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." CR 56(c). "After the moving party submits adequate affidavits, the nonmoving party must set forth specific facts which sufficiently rebut the moving party's contentions and disclose the existence of a genuine issue as to a material fact." White v. State, 131 Wn.2d 1, 9, 929 P.2d 396 (1997). Summary judgment is appropriate if in view of all the evidence, reasonable persons could reach only one conclusion. Hansen v. Friend, 118 Wn.2d 476, 485, 824 P.2d 483 (1992).

LaSalle relies on RCW 62A.3-402(a) to argue that Vogtman bound Vernon's estate when she refinanced the loans. RCW 62A.3-401(a) provides, "A person is not liable on an instrument unless (i) the person signed the instrument, or (ii) the person is represented by an agent or representative who signed the instrument and the signature is binding on the represented person

under RCW 62A.3-402." For a representative's signature to be binding on the principal under RCW 62A.3-402, the representative must be "acting, or purporting to act, as a representative."[1] "An agent can bind its principal to a contract when the agent has either actual or apparent authority. The existence of apparent authority is a question of fact for the trial court." Hoglund v. Meeks, 139 Wn. App. 854, 866, 170 P.3d 37 (2007) (footnote omitted).[2]

LaSalle is correct in stating that under RCW 11.68.090, a personal representative acting under nonintervention powers may encumber an estate and "[a] party to such a transaction and the party's successors in interest are entitled to have it conclusively presumed that the transaction is necessary for the administration of the decedent's estate." But even if a person is appointed as personal representative, she is still able to act in her individual capacity. See Aetna Life Ins. Co. v. Boober, 56 Wn. App. 567, 574, 784 P.2d 186 (1990) (a personal representative who sought the proceeds of a life insurance policy for herself was acting in her individual capacity).

Here, there is no evidence in the record that Vogtman was "acting, or purporting to act, as a representative" when she refinanced the loans. When

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[1] "If a person acting, or purporting to act, as a representative signs an instrument by signing either the name of the represented person or the name of the signer, the represented person is bound by the signature to the same extent the represented person would be bound if the signature were on a simple contract." RCW 62A.3-402(a).

[2] Ghramm asserts that RCW 62A.3-402(a) does not apply to the deed of trust because a deed of trust is not a negotiable instrument. Even assuming that Ghramm is correct, we may apply principles of the U.C.C. to the case by analogy. See Dep't of Retirement Sys. v. Kralman, 73 Wn. App. 25, 32, 867 P.2d 643 (1994) ("In cases where the UCC does not apply, we will apply analogous principles of state law.").

Vogtman refinanced the loans in 2004 and 2005, she signed the notes and deeds of trust as "Patricia L. Vogtman," with no reference to the estate or probate proceeding. The 2005 deed of trust stated explicitly that the borrower was "Patricia L. Vogtman, as her separate estate." Even though Vogtman had the authority to bind the entire estate, there is no evidence that she was acting in her capacity as the personal representative of the estate.

Here, reasonable persons could reach only one conclusion, that Vogtman was acting on her own behalf when she refinanced the loans and not in her capacity as personal representative of Vernon's estate. Accordingly, we conclude that the trial court did not err in granting Ghramm's motion for summary judgment.

In the alternative, LaSalle contends that its interest in the property is superior to Ghramm's interest in the property under the doctrine of equitable subrogation. We conclude that equitable subrogation does not apply to the facts of this case.

Equitable subrogation seeks to maintain the proper order of priorities by keeping the first mortgage first and the second mortgage second. Bank of Am., N.A. v. Prestance Corp., 160 Wn.2d 560, 564-65, 160 P.3d 17 (2007). Under equitable subrogation, if a creditor takes over an interest, the creditor has the same priority of the earlier holder of that interest, even if there are other more junior interest holders, provided there is no material prejudice to the junior interests. Bank of Am., 160 Wn.2d at 564-65, 581-82.[3]

LaSalle does not provide any support for its assertion that Ghramm's interest in the property is inferior and subordinate to the lien of the 2005 deed of trust. In addition, equitable subrogation does not apply if there is an increase in the principal amount, as there was here. Kim v. Lee, 145 Wn.2d 79, 89-90, 31 P.3d 665, 43 P.3d 1222 (2001) ("Absent an increase in the principal amount or the interest rate of the mortgage, such modifications normally do not jeopardize the mortgagee's priority as against intervening interests.") When Vogtman refinanced the 1998 loan in 2004, the new note was for $112,300. But when Vogtman refinanced the loan in 2005, the new note was for $176,500, a significant increase in the principal amount.

The California case LaSalle relies on, Katsivalis v. Serrano Reconveyance Co., 70 Cal.App.3d 200, 138 Cal. Rptr. 620 (1977), is distinguishable. In Katsivalis, the court found that because the wife authorized her husband to sign notes for her as her attorney-in-fact and the husband signed the note on her behalf, in effect "both joint tenants joined in the execution of the note and deed of trust, and solely as surviving joint tenant the widow could not defeat the acts which the court found the husband was authorized to take on her behalf." Katsivalis, 70 Cal. App. 3d at 208. The court also found that "the widow would be unjustly enriched if the relief she prayed for—cancellation of the note

[3] "For example, suppose A, a homeowner, has two mortgages: one recorded first by bank B and one recorded second by bank C. Our recording act says B has a higher priority because it recorded first, putting the world on notice as to its interest in A's land. RCW 65.08.070. If D fully discharges B's debt, then equitable subrogation substitutes D for B, so D has a higher priority than C, even though D recorded after." Bank of Am., 160 Wn.2d at 564.

and deed of trust—were unqualifiedly granted." Katsivalis, 70 Cal. App. 3d at 209.

Here, as discussed above, Vogtman did not sign the note on behalf of Vernon's estate or Ghramm. In addition, Ghramm would not be unjustly enriched if this court affirmed the trial court's decision. LaSalle concedes that "Ghramm will suffer loss if the summary judgment entered by the trial court is set aside and LaSalle Bank is allowed to foreclose the 2005 deed of trust non-judicially."

Because the doctrine of equitable subrogation does not apply to the facts of this case and LaSalle concedes that Ghramm would be materially prejudiced if the court were to apply equitable subrogation, we agree with the trial court that LaSalle does not have a superior interest in the property than Ghramm under the doctrine of equitable subrogation.

We affirm.

Spearman, J.

WE CONCUR:

Schindler, J.

Becker, J.